(a) ~~Cause a copy of the notice to be served upon~~ Order the district attorney ~~who shall~~ to file a written response within the time prescribed by the court.

(b) If it appears that counsel is necessary and if the ~~defendant~~ prisoner claims or appears to be indigent, refer the ~~person~~ prisoner to the appellate division of the state public defender for an indigency determination and appointment of counsel under ch. 977. The court shall forward a copy of the motion and any response of the district attorney to the state public defender.

(d) Determine the issues and make findings of fact and conclusions of law. If the court finds that it rendered the judgment ~~was rendered~~ without jurisdiction, ~~or~~ that the sentence imposed was not authorized by law or is otherwise open to collateral ~~attack~~ review, or that there has been such a denial or infringement of the constitutional rights of the ~~person~~ prisoner as to render the judgment vulnerable to collateral ~~attack~~ review, the court shall vacate and set aside the judgment ~~aside~~ and shall discharge the ~~person~~ prisoner or resentence ~~him or her or~~ the prisoner, grant the prisoner a new trial, or correct the sentence as may appear appropriate.

SECTION 1107. 974.06 (4) of the statutes is amended to read:

974.06 **(4)** All grounds for relief available to a ~~person~~ prisoner under this section must be raised in his or her original, supplemental, or amended motion. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the ~~person~~ prisoner has taken to secure relief may not be the basis for a subsequent motion, unless the court finds a ground for relief asserted ~~which~~ that, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental, or amended motion.

SECTION 1108. 974.06 (5), (6), (7) and (8) of the statutes are amended to read:

974.06 **(5)** A court may entertain and determine ~~such~~ a motion under sub. (1) without requiring the production of the prisoner at the hearing. The court may hear the motion ~~may be heard~~ by telephone or live audiovisual means under s. 807.13.

(6) Proceedings under this section shall be considered civil in nature, and the burden of proof shall be upon the ~~person~~ prisoner.

(7) ~~An~~ A prisoner may appeal ~~may be taken from the~~ an order entered on the motion under sub. (1) as ~~from~~ if the order were a final judgment.

(8) A court may not entertain a petition for a writ of habeas corpus or an action seeking that remedy ~~in~~ on behalf of a ~~person~~ prisoner who is authorized to apply for relief by motion under ~~this section shall not be entertained~~ sub. (1) if it appears that the ~~applicant~~ prisoner has failed to ~~apply for relief, by~~ file a motion~~, to~~ under sub. (1) with the court which sentenced the ~~person~~ prisoner, or that the court has denied the ~~person relief~~ motion, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of ~~his or her~~ the prisoner's detention.

SECTION 1109. 974.07 (4) (b) of the statutes is amended to read:

974.07 **(4)** (b) Notwithstanding the limitation on the disclosure of mailing addresses from completed information cards submitted by victims under ss. 51.37 (10) (dx), 301.046 (4) (d), 301.048 (4m) (d), 301.38 (4), 302.105 (4), 304.06 (1) (f), 304.063 (4), 938.51 (2), ~~971.17 (6m) (d)~~ 975.62 (4), and 980.11 (4), the department of corrections, the parole commission, and the department of health services shall, upon request, assist clerks of court in obtaining information regarding the mailing address of victims for the purpose of sending copies of motions and notices of hearings under par. (a).

SECTION 1110. 974.07 (7) (b) 1. of the statutes is amended to read:

974.07 **(7)** (b) 1. It is reasonably probable that the outcome of the proceedings that resulted in the conviction, the finding of not guilty by reason of mental disease or defect, or the delinquency adjudication for the offense at issue in the motion under sub. (2), or the terms of the sentence, the commitment under ~~s. 971.17~~ subch. III of ch. 975, or the disposition under ch. 938, would have been more favorable to the movant if the results of deoxyribonucleic acid testing had been available before he or she was prosecuted, convicted, found not guilty by reason of mental disease or defect, or adjudicated delinquent for the offense.

SECTION 1111. 974.07 (9) (a) of the statutes is amended to read:

974.07 **(9)** (a) If a person other than the movant is in custody, as defined in s. ~~968.205~~ 968.645 (1) (a), the evidence is relevant to the criminal, delinquency, or commitment proceeding that resulted in the person being in custody, the person has not been denied deoxyribonucleic acid testing or postconviction relief under this section, and the person has not waived his or her right to preserve the evidence under s. 165.81 (3), 757.54 (2), ~~968.205~~ 968.645, or 978.08, the court shall order the evidence preserved until all persons entitled to have the evidence preserved are released from custody, and the court shall designate who shall preserve the evidence.

SECTION 1112. 974.07 (10) (a) 4. of the statutes is amended to read:

974.07 **(10)** (a) 4. An order discharging the movant from custody, as defined in s. ~~968.205~~ 968.645 (1) (a), if the movant is in custody.

SECTION 1113. 974.08 (title) of the statutes is created to read:

974.08 (title) **Defendant's presence at postconviction proceedings.**

SECTION 1114. 974.08 (1) of the statutes is created to read:

974.08 **(1)** A defendant has the right to be present at a postconviction proceeding when the hearing will address substantial issues of fact as to events in

which the defendant participated and those issues are supported by more than mere allegations.

SECTION 1115. 974.08 (2) and (3) of the statutes are created to read:

974.08 **(2)** A defendant need not be present at the pronouncement or entry of an order granting or denying relief under s. 974.02, 974.03, 974.06, or 974.07. If the defendant is not present, the time for appealing the order shall commence after a copy has been served upon the defendant's counsel or, if he or she appeared without counsel, upon the defendant, except as provided in sub. (3). Service of such an order shall be complete upon mailing.

(3) A defendant appearing without counsel shall supply the court with his or her current mailing address. If the defendant fails to supply the court with a current and accurate mailing address, the defendant's failure to receive a copy of the order granting or denying relief shall not be a ground for tolling the time in which an appeal must be taken.

SECTION 1116. 974.09 (title) of the statutes is created to read:

974.09 (title) **Release pending appeal.**

SECTION 1117. Chapter 975 (title) of the statutes is repealed and recreated to read:

CHAPTER 975

MENTAL ISSUES IN CRIMINAL PROCEEDINGS: COMPETENCY AND RESPONSIBILITY

SECTION 1118. 975.001 of the statutes is repealed.

SECTION 1119. 975.01 of the statutes is repealed.

SECTION 1120. 975.06 of the statutes is repealed.

SECTION 1121. 975.07 of the statutes is repealed.

SECTION 1122. 975.08 of the statutes is repealed.

SECTION 1123. 975.09 of the statutes is repealed.

SECTION 1124. 975.10 of the statutes is repealed.

SECTION 1125. 975.11 of the statutes is repealed.

SECTION 1126. 975.12 of the statutes is repealed.

SECTION 1127. 975.15 of the statutes is repealed.

SECTION 1128. 975.16 of the statutes is repealed.

SECTION 1129. 975.17 of the statutes is repealed.

SECTION 1130. 975.18 of the statutes is repealed.

SECTION 1131. Subchapter I (title) of chapter 975 [precedes 975.20] of the statutes is created to read:

CHAPTER 975

SUBCHAPTER I

GENERAL PROVISIONS

SECTION 1132. 975.20 of the statutes is created to read:

975.20 Definitions. In this chapter:

(1) "Department" means the department of health services, except as otherwise expressly provided.

(2) "Not competent to refuse medication or treatment" means that because of mental illness, developmental disability, alcoholism, or drug dependency, and after the advantages and disadvantages of and alternatives to accepting a particular medication or treatment have been explained to a person, one of the following is true:

(a) The person is incapable of expressing an understanding of the advantages, disadvantages, and alternatives.

(b) The person is substantially incapable of applying an understanding of the advantages, disadvantages, and alternatives to his or her mental illness, developmental disability, alcoholism, or drug dependence in order to make an informed choice as to whether to accept or refuse medication or treatment.

(3) "Physician" has the meaning given in s. 448.01 (5).

(4) "Psychologist" means a person holding a valid license under s. 455.04.

SECTION 1133. Subchapter II (title) of chapter 975 [precedes 975.30] of the statutes is created to read:

CHAPTER 975

SUBCHAPTER II

COMPETENCY

SECTION 1134. 975.31 (title) of the statutes is created to read:

975.31 (title) **Raising the issue of competency.**

SECTION 1135. 975.31 (2) of the statutes is created to read:

975.31 **(2)** (a) If reason to doubt a defendant's competency to proceed arises before judgment, the court shall not order an examination into competency until it has found that it is probable that the defendant committed the offense charged.

(b) The finding under par. (a) may be based upon the complaint and material providing the factual basis for the complaint, or, if the defendant submits an affidavit alleging with particularity that the averments of the complaint are materially false, upon the complaint and the evidence presented at a hearing ordered by the court. The defendant may call and cross–examine witnesses at a probable cause hearing under this section. If the court finds that it is probable that the defendant committed the offense charged, the court shall order an examination of the defendant under s. 975.32.

(c) If the court does not find that it is probable that the defendant committed the offense charged, the court shall dismiss the charge without prejudice and release the defendant.

SECTION 1136. 975.32 (title) of the statutes is created to read:

975.32 (title) **Competency examination.**

SECTION 1137. 975.32 (2) of the statutes is created to read:

975.32 **(2)** Notwithstanding sub. (1), if the parties agree that a previously conducted mental examination provides a sufficient basis for the court to make the determination under s. 975.34 and the court concurs, a new examination need not be ordered.

SECTION 1138. 975.32 (4) of the statutes is created to read:

975.32 **(4)** If the defendant is in custody, the court may order an inpatient or outpatient examination and all of the following apply:

(a) Any outpatient examination for a defendant in custody shall be conducted in a jail or locked unit of a facility.

(b) If an inpatient examination is determined by the court to be necessary for a defendant in custody, the defendant may be committed to a suitable mental health facility. If the examination is to be conducted by the department under par. (c), the court shall order the individual to the facility designated by the department.

(c) If the court orders a defendant in custody to be examined by the department or a department facility, the department shall determine where the examination will be conducted, who will conduct the examination, and whether the examination will be conducted on an inpatient or outpatient basis. If an outpatient examination is begun by or through the department, and the department later determines that inpatient examination is necessary, the sheriff shall transport the defendant to the

inpatient facility designated by the department. In any case under this paragraph in which the department determines that an inpatient examination is necessary, the 15–day period under sub. (6) (a) begins upon the arrival of the defendant at the inpatient facility.

SECTION 1139. 975.32 (7) of the statutes is created to read:

975.32 **(7)** Days spent in a mental health facility for an inpatient competency examination ordered under this section count as days spent in custody under s. 973.155.

SECTION 1140. 975.32 (10) of the statutes is created to read:

975.32 **(10)** The court may order additional experts to examine the defendant at any stage of the proceedings to determine the defendant's competency to proceed.

SECTION 1141. 975.33 (title) of the statutes is created to read:

975.33 (title) **Examination report.**

SECTION 1142. 975.33 (1) (f) of the statutes is created to read:

975.33 **(1)** (f) If the examiner reports that the defendant is not competent to proceed and that the defendant is not likely to become competent within the maximum period of commitment, as defined in s. 975.34 (6) (a), the examiner's opinion on whether the defendant meets the criteria for commitment under ch. 51 or 55.

SECTION 1143. 975.34 of the statutes is created to read:

975.34 Competency determination. (1) HEARING. As soon as practicable after receiving the examiner's report under s. 975.33, the court shall hold a hearing on the defendant's competency to proceed and, if at issue, on the defendant's competency to refuse medication or treatment.

(2) WAIVER OF HEARING. Notwithstanding sub. (1), if the parties agree that a hearing is not necessary and the court concurs, the court may make a determination on the defendant's competency to proceed and, if relevant, the defendant's competency to refuse medication or treatment based on the court–ordered report and other information adduced.

(3) BURDEN OF GOING FORWARD. If a hearing is held under this section, the district attorney has the burden of going forward with the evidence.

(4) BURDEN OF PERSUASION. Regardless of who raised the issue of competency, the court may find the defendant competent to proceed only if, after hearing evidence or reviewing the reports submitted under s. 975.33, or both, the court finds by the greater weight of the evidence that the defendant is competent to proceed.

(5) RESUMING PROCEEDINGS. If the court finds the defendant competent to proceed, the court shall enter its finding on the record and shall resume the criminal proceedings.

(6) SUSPENDING PROCEEDINGS; COMMITMENT FOR TREATMENT. (a) In this subsection, "maximum period of commitment" means the greatest maximum sentence length for any crime for which the defendant is charged, including imprisonment authorized by any applicable penalty enhancement statutes, or 12 months, whichever is less.

(b) If the court does not find by the greater weight of the evidence that the defendant is competent to proceed, the court shall find that the defendant is not competent, shall enter its finding on the record, shall suspend the criminal proceedings, and shall do one of the following:

1. If the court finds by the greater weight of the evidence that the defendant is not likely to become competent within the maximum period of commitment, the court shall order that the defendant be released, except as provided in s. 975.38.

2. If the court finds by the greater weight of the evidence that the defendant is likely to become competent within the maximum period of commitment without inpatient treatment, the court shall order that the defendant be released. The court may require the defendant to participate in outpatient treatment, undergo periodic reexaminations to determine whether the defendant has become competent to proceed, or both, for a period that does not exceed the maximum period of commitment.

3. If the court finds by clear and convincing evidence that the defendant is likely to become competent within the maximum period of commitment if provided appropriate inpatient treatment, proceed under sub. (7).

(7) COMMITMENT FOR TREATMENT.

(8) COMPETENCY TO REFUSE MEDICATION OR TREATMENT. If the defendant is committed to the department under sub. (7) and the state proves by clear and convincing evidence that the defendant is not competent to refuse medication or treatment, the court shall find, without a jury, that the defendant is not competent to refuse medication or treatment, and order that whoever administers medication or treatment to the defendant shall observe appropriate medical standards.

SECTION 1144. 975.36 (title) of the statutes is created to read:

975.36 (title) **Reexamination of defendant's competency.**

SECTION 1145. 975.36 (2) of the statutes is created to read:

975.36 **(2)** REPORTS AT OTHER TIMES. The department shall furnish written reports of examination to the court whenever it determines that the defendant has

become competent or that the defendant is not likely to become competent within the remaining commitment period. The reports shall comply with the requirements of sub. (1). The court shall schedule a review of a report under this subsection within 14 days after the court receives the report.

SECTION 1146. 975.36 (4) of the statutes is created to read:

975.36 **(4)** FINAL REEXAMINATION. Before or at the end of the commitment, the court shall order the defendant discharged from the commitment and shall release the defendant, except as provided in s. 975.38.

SECTION 1147. 975.37 of the statutes is created to read:

975.37 Involuntary medication to restore competency at trial. The court may order involuntary medication to restore a defendant's competency to stand trial only if the court finds that there is a need for that medication sufficiently important to overcome the defendant's protected interest in refusing it. The court shall consider the effectiveness and side effects of the medication, the possible alternatives, and the medical appropriateness of the medication.

SECTION 1148. 975.38 (title) of the statutes is created to read:

975.38 (title) **Mental health commitment or protective placement.**

SECTION 1149. 975.39 of the statutes is created to read:

975.39 Competency to pursue postconviction relief. (1) APPLICABILITY. The court shall proceed under this section whenever there is reason to doubt a defendant's competency to seek postconviction relief under s. 809.30.

(2) STANDARD. A defendant lacks competency to pursue postconviction relief under s. 809.30 if he or she is unable, with a reasonable degree of rational understanding, to assist counsel or to make decisions committed by law to the defendant.

(3) DETERMINING COMPETENCY. If the court determines that reason exists to doubt a defendant's competency to pursue postconviction relief under s. 809.30, it shall, as an exercise of its discretion, determine the method for evaluating a defendant's competency. A court may rely upon the affidavits of counsel, a stipulation, or the court's observation of the defendant. A court may order an examination of the defendant by a person with specialized knowledge. A court may, in its discretion, hold a hearing before determining a defendant's competency. Any hearing conducted under this subsection shall be governed by s. 975.34 to the extent practicable.

(4) ALTERNATIVES PENDING A COMPETENCY DETERMINATION. Pending a determination of competency to pursue postconviction relief or after a finding that the defendant lacks competency, the applicable court may do any of the following:

(a) The circuit court may allow the initiation or continuation of proceedings on any issue raised by the defendant's attorney that rests on the records, does not require the defendant to assist counsel or make a decision, and involves no risk to the defendant.

(b) The court of appeals may grant the defendant a continuance or an enlargement of time for filing necessary notices or motions for postconviction relief.

(5) APPOINTING A GUARDIAN; ORDERING TREATMENT. If the court finds that the defendant lacks competency to pursue postconviction relief, the court may do any of following:

(a) Appoint a guardian to make decisions that the law requires the defendant to make.

(b) Order treatment to restore the defendant to competency to pursue postconviction relief.

(6) RAISING ISSUES AFTER COMPETENCY IS REGAINED. A defendant who lacks competency to pursue postconviction relief at the time he or she seeks postconviction relief may, after regaining competency, raise any issue at a later proceeding that he or she did not raise earlier because of incompetency.

SECTION 1150. Subchapter III (title) of chapter 975 [precedes 975.50] of the statutes is created to read:

CHAPTER 975

SUBCHAPTER III

MENTAL RESPONSIBILITY

SECTION 1151. 975.51 (4) (b) of the statutes is created to read:

975.51 **(4)** (b) If a physician, psychologist, or other expert examines the defendant at the request of the state, the examiner may not testify at trial regarding the mental condition of the defendant unless the examiner provides a report of his or her examination of the defendant to the defendant or defendant's attorney at least 15 days before trial.

SECTION 1152. 975.51 (5) (b) of the statutes is created to read:

975.51 **(5)** (b) A physician, psychologist, or other expert may not testify regarding the defendant's need for medication or treatment or competence to refuse medication or treatment before a jury that is determining the ability of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct with the requirements of law at the time of the commission of the criminal offense charged.

SECTION 1153. 975.52 (1) of the statutes is created to read:

975.52 **(1)** JOINED WITH A PLEA OF GUILTY OR NO CONTEST. If a defendant joins a plea of guilty or no contest with a plea of not guilty by reason of mental disease or

defect, the court shall first determine whether to accept the plea of guilty or no contest. If the plea is accepted, the court shall proceed under sub. (3).

SECTION 1154. 975.52 (4) (title) of the statutes is created to read:

975.52 **(4)** (title) ENTERING JUDGMENT.

SECTION 1155. 975.53 (title) of the statutes is created to read:

975.53 Notice of restrictions.

SECTION 1156. 975.54 (title) of the statutes is created to read:

975.54 (title) **Sexual assault; supervision, registration, and testing.**

SECTION 1157. 975.56 (title) of the statutes is created to read:

975.56 (title) **Precommitment examination.**

SECTION 1158. 975.57 (2) (e) of the statutes is created to read:

975.57 **(2)** (e) *Commitment credit*. A person committed under par. (a), (b), or (d) shall be given credit for all days spent in custody in connection with the course of conduct for which the commitment is imposed. The standards in s. 973.155 for determining sentence credit for convicted persons apply to determining commitment credit under this section.

SECTION 1159. 975.57 (3) of the statutes is created to read:

975.57 **(3)** INSTITUTIONALIZED CARE. If the court orders the person institutionalized under this section, the department shall place the person in an institution under s. 51.37 (3) that the department considers appropriate in light of the rehabilitative services required by the person and the protection of public safety.

SECTION 1160. 975.57 (4) (title) of the statutes is created to read:

975.57 **(4)** (title) CONDITIONAL RELEASE.

SECTION 1161. 975.57 (4) (b) and (c) of the statutes are created to read:

975.57 **(4)** (b) An order for conditional release places the person in the custody and control of the department. A conditionally released person is subject to the conditions set by the court and to the rules of the department. The court, for cause and by order, may modify the conditions of release.

(c) Before a person is conditionally released by the court under this subsection, the court shall notify the municipal police department and county sheriff for the area where the person will be residing. The notification requirement does not apply if a municipal department or county sheriff submits to the court a written statement waiving the right to be notified.

SECTION 1162. 975.57 (5) (title) of the statutes is created to read:

975.57 **(5)** (title) COMPETENCE TO REFUSE MEDICATION.

SECTION 1163. 975.59 (5) (title) of the statutes is created to read:

975.59 **(5)** (title) CONDITIONAL RELEASE.

SECTION 1164. 975.59 (5) (b) and (c) of the statutes are created to read:

975.59 **(5)** (b) An order for conditional release places the person in the custody and control of the department. A conditionally released person is subject to the conditions set by the court and to the rules of the department. The court, for cause and by order, may modify the conditions of release.

(c) Before a person is conditionally released by the court under this subsection, the court shall notify the municipal police department and county sheriff for the area where the person will be residing. The notification requirement does not apply if a municipal police department or county sheriff submits to the court a written statement waiving the right to be notified.

SECTION 1165. 975.61 (1) (d) of the statutes is created to read:

975.61 **(1)** (d) The corporation counsel in the municipality and county in which the commitment order was entered.

SECTION 1166. 975.62 (title) of the statutes is created to read:

975.62 (title) **Notice of change in status of committed person.**

SECTION 1167. 975.62 (1) (d) of the statutes is created to read:

975.62 **(1)** (d) "Victim's representative" means the victim or, if the victim died as a result of the crime, an adult member of the victim's family, or, if the victim is younger than 18 years old, the victim's parent or legal guardian.

SECTION 1168. 975.62 (2), (3) and (4) of the statutes are created to read:

975.62 **(2)** If the court conditionally releases a person under s. 975.57 (4) or 975.59, the district attorney who prosecuted the crime for which the person was committed shall notify the department of corrections and make a reasonable attempt to notify the victim's representative of the conditional release.

(3) If the court terminates a person's commitment order under s. 975.60 or discharges a person under s. 975.61, the department shall notify the department of corrections and, if the victim's representative has submitted a card under sub. (5), the victim's representative of the termination or discharge.

(4) Notice under sub. (2) or (3) shall include the name of the person who is conditionally released or discharged or whose commitment order is terminated and the date of conditional release, termination, or discharge, whichever is applicable. The district attorney or the department, whichever is applicable, shall send the notice, postmarked no later than 7 days after the court orders the conditional release, termination, or discharge, to the department of corrections and to the last–known address of the victim's representative.

SECTION 1169. 975.63 (3) of the statutes is created to read:

975.63 **(3)** All hearings under ss. 975.55 to 975.61 shall be before a judge without a jury.

SECTION 1170. 977.05 (4) (h) of the statutes is amended to read:

977.05 **(4)** (h) Accept requests for legal services from persons who are entitled to be represented by counsel under s. 48.23, 51.60, 55.105, or 938.23 and from indigent persons who are entitled to be represented by counsel under s. ~~967.06~~ 971.013 or who are otherwise so entitled under the constitution or laws of the United States or this state and provide such persons with legal services when, in the discretion of the state public defender, such provision of legal services is appropriate.

SECTION 1171. 977.05 (4) (j) of the statutes is amended to read:

977.05 **(4)** (j) Subject to sub. (6) (e) and (f), at the request of any person determined by the state public defender to be indigent or upon referral of any court, prosecute a writ of error, appeal, action or proceeding for habeas corpus or other postconviction or post–commitment remedy on behalf of the person before any court, if the state public defender determines the case should be pursued. The state public defender must pursue the case of any indigent person entitled to counsel under s. ~~971.17 (7) (b) 1.~~ 975.63 (2) (a) or 980.03 (2) (a).

SECTION 1172. 977.05 (6) (b) 2. of the statutes is amended to read:

977.05 **(6)** (b) 2. The judge ~~or circuit court commissioner~~ before whom the proceedings shall be held certifies to the state public defender that the person will not be incarcerated if he or she is found in contempt of court.

SECTION 1173. 977.05 (6) (e) (intro.) and 2. of the statutes are amended to read:

977.05 **(6)** (e) (intro.) The state public defender may not provide legal services or assign counsel for a person who files a motion to modify sentence under s. ~~973.19~~ 974.03 (1) (a), or for a person who appeals, under s. ~~973.19 (4)~~ 974.03 (1) (d), the denial

of a motion to modify sentence filed under s. ~~973.19~~ 974.03 (1) (a), unless the person does one of the following:

2. Files the motion to modify sentence under s. ~~973.19~~ 974.03 (1) (a) within 20 days after the sentence or order is entered.

SECTION 1174. 977.072 (title) of the statutes is created to read:

977.072 (title) **Transcript or court record; costs.**

SECTION 1175. 978.045 (1r) (intro.) of the statutes is amended to read:

978.045 **(1r)** (intro.) Any judge of a court of record, by an order entered in the record stating the cause for it, may appoint an attorney as a special prosecutor to perform, for the time being, or for the trial of the accused person, the duties of the district attorney. An attorney appointed under this subsection shall have all of the powers of the district attorney. The judge may appoint an attorney as a special prosecutor at the request of a district attorney to assist the district attorney in the prosecution of persons charged with a crime, in grand jury proceedings ~~or~~, in John Doe proceedings under s. ~~968.26~~ 968.105, in proceedings under ch. 980, or in investigations. The judge may appoint an attorney as a special prosecutor if any of the following conditions exists:

SECTION 1176. 978.045 (1r) (i) of the statutes is amended to read:

978.045 **(1r)** (i) A judge determines that a complaint received under s. ~~968.26~~ 968.105 (2) (am) relates to the conduct of the district attorney to whom the judge otherwise would refer the complaint.

SECTION 1177. 978.05 (3) of the statutes is amended to read:

978.05 **(3)** JOHN DOE PROCEEDINGS. Participate in investigatory proceedings under s. ~~968.26~~ 968.105.

SECTION 1178. 978.05 (4) of the statutes is amended to read:

978.05 **(4)** GRAND JURY. When requested by a grand jury under s. ~~968.47~~ 968.225, attend the grand jury for the purpose of examining witnesses in their presence; give the grand jury advice in any legal matter; draw bills of indictment; and issue subpoenas and other processes to compel the attendance of witnesses.

SECTION 1179. 978.05 (6) (a) of the statutes is amended to read:

978.05 **(6)** (a) Institute, commence, or appear in all civil actions or special proceedings under and perform the duties set forth for the district attorney under ch. 980 and ss. 17.14, 30.03 (2), 48.09 (5), 59.55 (1), 59.64 (1), 70.36, 103.50 (8), 103.92 (4), 109.09, 343.305 (9) (a), 453.08, 806.05, 938.09, 938.18, 938.355 (6) (b) and (6g) (a), 946.86, 946.87, 961.55 (5), ~~971.14~~ and 973.075 to 973.077 and subch. II of ch. 975, perform any duties in connection with court proceedings in a court assigned to exercise jurisdiction under chs. 48 and 938 as the judge may request and perform all appropriate duties and appear if the district attorney is designated in specific statutes, including matters within chs. 782, 976 and 979 and subch. I of ch. 968 and ss. 51.81 to 51.85. Nothing in this paragraph limits the authority of the county board to designate, under s. 48.09 (5), that the corporation counsel provide representation as specified in s. 48.09 (5) or to designate, under s. 48.09 (6) or 938.09 (6), the district attorney as an appropriate person to represent the interests of the public under s. 48.14 or 938.14.

SECTION 1180. 978.06 (4) of the statutes is amended to read:

978.06 **(4)** No person who acted as district attorney, deputy district attorney or assistant district attorney, or special prosecutor under s. 978.045, for a county at the time of an arrest, examination or indictment of any person charged with a crime in that county may thereafter appear for, or defend that person against the crime charged in the complaint~~, information~~ or indictment.

SECTION 1181. 978.08 (1) (a) and (b), (2), (2m), (3), (4) and (5) of the statutes are amended to read:

978.08 **(1)** (a) "Custody" has the meaning given in s. ~~968.205~~ 968.645 (1) (a).

(b) "Discharge date" has the meaning given in s. ~~968.205~~ 968.645 (1) (b).

(2) Except as provided in sub. (3), if ~~physical evidence that is in the possession of~~ a district attorney ~~includes~~ possesses any biological material that was collected in connection with a criminal investigation that resulted in a criminal conviction, delinquency adjudication, or commitment under ~~s. 971.17~~ subch. III of ch. 975 or s. 980.06 ~~and the biological material is from a victim of the offense that was the subject of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense~~, the district attorney shall preserve the ~~physical evidence~~ biological material until every person in custody as a result of the conviction, adjudication, or commitment has reached his or her discharge date.

(2m) A district attorney shall retain ~~evidence~~ biological material to which sub. (2) applies in an amount and manner sufficient to develop a deoxyribonucleic acid profile, as defined in s. 939.74 (2d) (a), from ~~the biological material contained in or included on the evidence~~ it.

(3) Subject to sub. (5), a district attorney may destroy ~~evidence that includes~~ biological material before the expiration of the time period specified in sub. (2) if all of the following apply:

(a) The district attorney sends a notice of its intent to destroy the ~~evidence~~ biological material to all persons who remain in custody as a result of the criminal conviction, delinquency adjudication, or commitment and to either the attorney of record for each person in custody or the state public defender.

(b) No person who is notified under par. (a) does either of the following within 90 days after the date on which the person ~~received~~ receives the notice:

1. Files a motion for testing of the ~~evidence~~ biological material under s. 974.07 (2).

2. Submits a written request ~~for retention of the evidence~~ to preserve the biological material to the district attorney.

(c) No other provision of federal or state law requires the district attorney to ~~retain the evidence~~ preserve the biological material.

(4) A notice provided under sub. (3) (a) shall clearly inform the recipient that the ~~evidence~~ biological material will be destroyed unless, within 90 days after the date on which the person receives the notice, either a motion for testing of the ~~evidence~~ biological material is filed under s. 974.07 (2) or a written request ~~for retention of the evidence~~ to preserve the biological material is submitted to the district attorney.

(5) If, after providing notice under sub. (3) (a) of its intent to destroy ~~evidence~~ biological material, a district attorney receives a written request ~~for retention of the evidence~~ to preserve biological material, the district attorney shall retain the ~~evidence~~ biological material until the discharge date of the person who made the request or on whose behalf the request was made, subject to a court order issued under s. 974.07 (7), (9) (a), or (10) (a) 5., unless the court orders destruction or transfer of the ~~evidence~~ biological material under s. 974.07 (9) (b) ~~or (10) (a) 5.~~

SECTION 1182. 979.02 of the statutes is amended to read:

979.02 Autopsies. The coroner, medical examiner or district attorney may order the conducting of an autopsy upon the body of a dead person any place within the state in cases where an inquest might be had as provided in s. ~~979.04~~ 968.015

notwithstanding the fact that no such inquest is ordered or conducted. The autopsy shall be conducted by a licensed physician who has specialized training in pathology. The district attorney may move the ~~circuit~~ court for the county in which the body is buried for an order disinterring the body for purposes of autopsy. The order shall be granted by the ~~circuit~~ court upon a reasonable showing that any of the criteria specified in s. ~~979.04~~ 968.015 exists. This section does not prevent additional autopsies or examinations of the body if there are unanswered pathological questions concerning the death and the causes of death.

SECTION 1183. 979.025 (1) of the statutes is amended to read:

979.025 **(1)** INMATE CONFINED TO AN INSTITUTION IN THIS STATE. If an individual dies while he or she is in the legal custody of the department and confined to a correctional facility located in this state, the coroner or medical examiner of the county where the death occurred shall perform an autopsy on the deceased individual. If the coroner or medical examiner who performs the autopsy determines that the individual's death may have been the result of any of the situations that would permit the district attorney to order an inquest under s. ~~979.04~~ 968.015 (1), the coroner or medical examiner shall follow the procedures under s. ~~979.04~~ 968.015 (2).

SECTION 1184. 979.025 (2) of the statutes is amended to read:

979.025 **(2)** INMATE CONFINED IN AN INSTITUTION IN ANOTHER STATE. If an individual dies while he or she is in the legal custody of the department and confined to a correctional facility in another state under a contract under s. 301.07, 301.21, or 302.25, the department shall have an autopsy performed by an appropriate authority in the other state or by the coroner or medical examiner of the county in which the ~~circuit~~ court is located that sentenced the individual to the custody of the

department. If the coroner or medical examiner who performs the autopsy in this state determines that the individual's death may have been the result of any of the situations that would permit the district attorney to order an inquest under s. ~~979.04~~ 968.015 (1), the coroner or medical examiner shall forward the results of the autopsy to the appropriate authority in the other state.

SECTION 1185. 979.04 of the statutes is renumbered 968.015 and amended to read:

968.015 ~~Inquests: when~~ When inquests may be called. (1) If the district attorney has notice of the death of any person and there is reason to believe from the circumstances surrounding the death that the person was a victim of felony murder, first–degree or 2nd–degree intentional homicide, first–degree or 2nd–degree reckless homicide, homicide by negligent handling of dangerous weapon, explosives, or fire, homicide by negligent operation of vehicle, homicide resulting from negligent control of a vicious animal ~~or,~~ homicide by intoxicated user of a vehicle or firearm ~~may have been committed~~, or ~~that death may have been due to~~ suicide or the person died under unexplained or suspicious circumstances, the district attorney may order that an inquest be conducted for the purpose of inquiring how the person died. ~~The district attorney shall appear in any such inquest representing the state in presenting all evidence which may be relevant or material to the inquiry of the inquest. The inquest may be held in any county in this state in which venue would lie for the trial of any offense charged as the result of or involving the death.~~

(4) An inquest may ~~only~~ be ordered only by the district attorney acting under ~~this subsection~~ sub. (1) or by the ~~circuit~~ judge under sub. (2).

(2) If the coroner or medical examiner ~~has knowledge of the death of any~~ knows that a person has died in the manner or under the circumstances described ~~under~~ in

sub. (1), he or she ~~shall immediately notify the district attorney. The notification shall include information concerning the circumstances surrounding the death. The coroner or medical examiner~~ may request the district attorney to order an inquest under sub. (1). If the district attorney refuses to order the inquest, ~~a~~ the coroner or medical examiner may petition the ~~circuit~~ court to order an inquest. The court may issue the order if it finds that the district attorney has abused his or her discretion in not ordering an inquest.

(3) ~~Subsequent to receipt of~~ After receiving notice of the death, the district attorney may request the coroner or medical examiner to conduct a preliminary investigation and report back to the district attorney. The district attorney may determine the scope of the preliminary investigation. This subsection does not limit or prevent any other investigation into the death by any law enforcement agency with jurisdiction over the investigation.

SECTION 1186. 979.05 (title) of the statutes is repealed.

SECTION 1187. 979.05 (1) of the statutes is renumbered 968.025 (1) and amended to read:

968.025 **(1)** BY WHOM CONDUCTED. ~~An inquest shall be conducted by a circuit~~ A judge ~~or a circuit court commissioner~~ shall conduct each inquest.

SECTION 1188. 979.05 (2) of the statutes is renumbered 968.025 (2) and amended to read:

968.025 **(2)** BEFORE WHOM CONDUCTED. The inquest shall be conducted before a jury unless the district attorney, coroner, or medical examiner requests that the inquest be conducted before the judge ~~or circuit court commissioner~~ only.

(4) (a) If the inquest is to be conducted before a jury, the clerk shall select, in the manner provided in s. 756.06 (1), a sufficient number of names of prospective

jurors ~~shall be selected~~ from the prospective juror list for the county in which the inquest is to be held ~~by the clerk of circuit court in the manner provided in s. 756.06. The judge or circuit court commissioner conducting the inquest shall summon the prospective jurors to appear before the judge or circuit court commissioner at the time fixed in the summons. The summons may be served by mail, or by personal service if the judge, circuit court commissioner, or district attorney determines personal service to be appropriate. The summons shall be in the form used to summon petit jurors in the circuit courts of the county~~ to ensure that the jury consists of 6 members.

(b) Any person who fails to appear when summoned as an inquest juror ~~is subject to a forfeiture of~~ shall forfeit not more than $40. ~~The inquest jury shall consist of 6 jurors. If 6 jurors do not remain~~

(d) If, after all prospective jurors have been examined, fewer than 12 remain from the number originally summoned ~~after establishment of qualifications~~, the judge ~~or circuit court commissioner~~ conducting the inquest ~~may require~~ shall direct the clerk ~~of the circuit court to select~~ to draw sufficient additional jurors' names. ~~Those persons shall be summoned forthwith by the~~ The sheriff of the county shall summon those persons immediately.

SECTION 1189. 979.05 (3) of the statutes is renumbered 968.025 (4) (c) and amended to read:

968.025 (4) (c) The judge ~~or circuit court commissioner~~ shall examine on oath or affirmation each person who is called as a juror to discover whether the juror is related by blood, or marriage ~~or adoption~~ to the decedent, any member of the decedent's family, the district attorney, any other attorney appearing in the case, or any members of the office of the district attorney or of the office of any other attorney

appearing in the case, has expressed or formed any opinion regarding the matters being inquired into in the inquest, or is aware of or has any bias or prejudice concerning the matters being inquired into in the inquest. ~~If any prospective juror is found~~ The court shall excuse any prospective juror whom it finds to be not indifferent or ~~is found~~ to have formed an opinion ~~which~~ that cannot be laid aside~~, that juror shall be excused. The judge or circuit commissioner may select one or more alternate jurors if the inquest is likely to be protracted~~. This ~~subsection~~ paragraph does not limit the right of the district attorney to supplement the judge's ~~or circuit commissioner's~~ examination of any prospective jurors as to qualifications.

SECTION 1190. 979.05 (4) of the statutes is renumbered 968.025 (5) and amended to read:

968.025 **(5)** OATH. ~~When 6~~ After the jurors have been selected, the judge ~~or circuit court commissioner~~ shall administer to them an oath or affirmation which shall be substantially in the following form:

You do solemnly swear (affirm) that you will diligently inquire and determine on behalf of this state when, and in what manner and by what means, the person known as .... ~~who is now dead~~ came to his or her death and that you will return a true verdict thereon according to your knowledge, according to the evidence presented, and according to the instructions given to you by the .... (judge) (circuit court commissioner).

SECTION 1191. 979.05 (5), (6) and (7) of the statutes are renumbered 968.025 (6), (7) and (8) and amended to read:

968.025 **(6)** ROLE OF DISTRICT ATTORNEY. ~~Prior to the submission of evidence to the jury, the judge or circuit court commissioner may instruct the jury on its duties and on the substantive law regarding the issues which may be inquired into before~~

~~the jury~~ The district attorney shall appear in each inquest, represent the state, and present all evidence that may be relevant or material to the inquiry of the inquest. The district attorney may, at any time during the course of the inquest, make statements to the jury relating to procedural or evidentiary matters he or she and the judge ~~or circuit court commissioner~~ deem appropriate. ~~Section 972.12 applies to the conduct of the inquest jury.~~

(7) SECRECY AND SEQUESTRATION. The judge ~~or circuit court commissioner~~ conducting the inquest may order that proceedings be secret if the district attorney so requests or concurs and may sequester the inquest jury under s. 972.05.

(8) JUROR COMPENSATION. Inquest jurors shall receive the same compensation as jurors under s. 756.25.

SECTION 1192. 979.06 (title), (1), (2) and (5) of the statutes are repealed.

SECTION 1193. 979.06 (3), (4) and (6) of the statutes are renumbered 968.035 (1), (2) and (3), and 968.035 (1) and (2), as renumbered, are amended to read:

968.035 **(1)** Any witness examined at an inquest may have counsel present during the examination of that witness. The counsel may consult with a client during the examination of that client. The counsel may not examine or cross–examine his or her client, cross–examine or call other witnesses, or argue before the judge ~~or circuit court commissioner~~ holding the inquest.

(2) The judge ~~or circuit court commissioner~~ shall administer an oath or affirmation to each witness ~~which shall be substantially in the following form:~~

~~You do solemnly swear (affirm) that the evidence and testimony you give to this inquest concerning the death of the person known as .... shall be the truth, the whole truth and nothing but the truth~~ and shall cause the testimony given by all witnesses to be reduced to writing or recorded.

SECTION 1194. 979.07 of the statutes is repealed.

SECTION 1195. 979.08 (title) of the statutes is renumbered 968.055 (title).

SECTION 1196. 979.08 (1) of the statutes is renumbered 968.055 (1) and amended to read:

968.055 **(1)** ~~When the~~ Before submitting evidence ~~is concluded and the testimony closed~~ to the jury in an inquest, the judge ~~or circuit court commissioner shall~~ may instruct the jury on its duties and on the substantive law regarding the issues that may be inquired into before the jury. ~~The~~

(2) After all of the evidence is presented, the district attorney ~~shall prepare a written set of appropriate requested instructions and~~ shall submit ~~them~~ to the judge ~~or circuit court commissioner who, together with the district attorney,~~ a written set of proposed instructions on the jury's duties and on the substantive law regarding the issues inquired into before the jury. The judge shall compile the final set of instructions which shall ~~be given. The instructions shall~~ include ~~those~~ instructions for criminal offenses for which the judge or ~~circuit court commissioner~~ believes a reasonable jury might return a verdict based upon a finding of probable cause. The judge shall use the final instructions to instruct the jury and shall provide the jury with one complete set of them.

SECTION 1197. 979.08 (2) of the statutes is repealed.

SECTION 1198. 979.08 (3) (intro.) and (4) of the statutes are consolidated, renumbered 968.055 (3) (intro.) and amended to read:

968.055 **(3)** (intro.) The jury shall retire to consider its verdict after hearing all of the testimony and evidence, making all necessary inquiries, and having been instructed in the law. ~~The judge or circuit court commissioner shall provide the jury with one complete set of written instructions providing the substantive law to be~~

~~applied to the issues to be decided. The verdict shall be in a form which permits the following findings: (4)~~ The ~~jury shall render its~~ verdict shall be based upon a finding of probable cause, be unanimous, and be rendered in writing, signed by all ~~of its~~ members of the jury. The verdict shall set forth ~~its~~ the jury's findings from the evidence produced according to the instructions. The verdict shall be in a form that permits the following findings:

SECTION 1199. 979.08 (3) (a) of the statutes is renumbered 968.055 (3) (b) and amended to read:

968.055 **(3)** (b) Whether the deceased ~~came to his or her death by criminal means~~ died as a result of a crime and, if so, the specific crimes committed and the name of the person or persons, if known, ~~having~~ who committed the crimes.

SECTION 1200. 979.08 (3) (b) of the statutes is renumbered 968.055 (3) (a) and amended to read:

968.055 **(3)** (a) Whether the deceased came to his or her death by natural causes, accident, suicide, or an act privileged by law.

SECTION 1201. 979.08 (5) of the statutes is renumbered 968.055 (4) and amended to read:

968.055 **(4)** The inquest jury's verdict ~~delivered by the inquest jury~~ is advisory and does not preclude or require the issuance of any criminal charges by the district attorney.

SECTION 1202. 979.08 (6) of the statutes is renumbered 968.055 (5) and amended to read:

968.055 **(5)** Any verdict ~~so~~ rendered under sub. (4), after being validated and signed by the judge ~~or circuit court commissioner~~, together with the record of the inquest, shall be delivered to the district attorney for consideration. After

considering the verdict and record, the district attorney may deliver the entire inquest record or any part ~~thereof~~ of the record to the coroner or medical examiner for safekeeping.

****NOTE: You inquired about the repeal of this subsection. The language repealing sub. (6), as well as the note asking the committee to review the repeal, goes back at least to the 2009 draft. Given the size of the paper file, I stopped investigating. I also do not know why the previous amendments were included. LRB revision and correction bills generally clean up language as is done here. Current drafting style requires actual cross–references instead of "so" referring to a different provision and replaces terms such as "thereof" with clear references.

SECTION 1203. 979.08 (7) of the statutes is renumbered 968.055 (6) and amended to read:

968.055 **(6)** ~~The~~ Except as provided in s. 971.43, the record of a secret inquest proceeding ~~shall~~ is not ~~be~~ open for inspection unless so ordered by the judge ~~or circuit court commissioner~~ conducting the inquest ~~upon petition by the district attorney~~.

SECTION 1204. 979.09 of the statutes is amended to read:

979.09 Burial of body. If any judge ~~or circuit court commissioner~~ conducts an inquest as to the death of a stranger or of a person whose identity is unknown or whose body is unclaimed or if the district attorney determines that no inquest into the death of such a person is necessary and the ~~circuit~~ judge has not ordered an inquest under s. ~~979.04~~ 968.015 (2), the coroner or medical examiner shall cause the body to be decently buried or cremated and shall certify to all the charges incurred in taking any inquest by him or her and to the expenses of burial or cremation of the dead body. The charges and expenses shall be audited by the county board of the proper county and paid out of the county treasury.

SECTION 1205. 979.10 (2) of the statutes is amended to read:

979.10 **(2)** If a corpse is to be cremated, the coroner or medical examiner shall make a careful personal inquiry into the cause and manner of death, and conduct an

autopsy or order the conducting of an autopsy, if in his or her or the district attorney's opinion it is necessary to determine the cause and manner of death. If the coroner or medical examiner determines that no further examination or judicial inquiry is necessary he or she shall certify that fact. Upon written request by the district attorney the coroner or medical examiner shall obtain the concurrence of the district attorney before issuing the certification. If the coroner or medical examiner determines that further examination or judicial inquiry is necessary, he or she shall notify the district attorney under s. ~~979.04~~ 968.015 (2).

SECTION 1206. 979.11 of the statutes is amended to read:

979.11 Compensation of officers. The sole compensation of the coroner and deputy coroners for attendance at an inquest and for any preliminary investigation under ~~this chapter~~ ch. 968 at the direction of the district attorney shall be a reasonable sum set by the county board for each day actually and necessarily required for the purpose, and a sum set by the county board for each mile actually and necessarily traveled in performing the duty. Any coroner or deputy coroner may be paid an annual salary and allowance for traveling expenses to be established by the county board under s. 59.22 which shall be in lieu of all fees, per diem, and compensation for services rendered.

SECTION 1207. 979.22 of the statutes is amended to read:

979.22 Autopsies and toxicological services by medical examiners. A medical examiner may perform autopsies and toxicological services not required under this chapter or under subch. I of ch. 968 and may charge a fee established by the county board for such autopsies and services. The fee may not exceed an amount reasonably related to the actual and necessary cost of providing the service.

SECTION 1208. 980.015 (2) (c) of the statutes is amended to read:

980.015 **(2)** (c) The anticipated release of a person on conditional release under s. ~~971.17~~ 975.57 (4) or 975.59, the anticipated termination of a commitment order under ~~971.17~~ s. 975.60, or the anticipated discharge of a person from a commitment order under s. ~~971.17~~ 975.61, if the person has been found not guilty of a sexually violent offense by reason of mental disease or defect.

SECTION 1209. 980.015 (2) (d) of the statutes is amended to read:

980.015 **(2)** (d) The anticipated release on parole or discharge of a person committed under ch. 975, 2011 stats., for a sexually violent offense.

SECTION 1210. 980.031 (4) of the statutes is amended to read:

980.031 **(4)** If a party retains or the court appoints a licensed physician, licensed psychologist, or other mental health professional to conduct an examination under this chapter of the person's mental condition, the examiner shall have reasonable access to the person for the purpose of the examination, as well as to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records as provided under s. 146.82 (2) (cm), past and present juvenile records, as provided under ss. 48.396 (6), 48.78 (2) (e), 938.396 (10), and 938.78 (2) (e), and the person's past and present correctional records, including presentence investigation reports under s. ~~972.15~~ 973.004 (6).

SECTION 1211. 980.036 (2) (c) of the statutes is amended to read:

980.036 **(2)** (c) Evidence obtained in the manner described under s. ~~968.31~~ 968.345 (2) (b), if the prosecuting attorney intends to use the evidence at the trial or proceeding.

SECTION 1212. 980.036 (6) of the statutes is amended to read:

980.036 **(6)** PROTECTIVE ORDER. Upon motion of a party, the court may at any time order that discovery, inspection, or the listing of witnesses required under this

section be denied, restricted, or deferred, or make other appropriate orders. If the prosecuting attorney or the attorney for a person subject to this chapter certifies that listing a witness under sub. (2) (e) or (3) (a) may subject the witness or others to physical or economic harm or coercion, the court may order that the deposition of the witness be taken under s. ~~967.04 (2) to (6)~~ 967.21. The name of the witness need not be divulged prior to the taking of such deposition. If the witness becomes unavailable or changes his or her testimony, the deposition shall be admissible at trial as substantive evidence.

SECTION 1213. 990.01 (23) of the statutes is amended to read:

990.01 **(23)** NIGHTTIME. "Nighttime," used in any statute, ordinance, indictment or ~~information~~ complaint, means the time between one hour after sunset on one day and one hour before sunrise on the following day; and the time of sunset and sunrise shall be ascertained according to the mean solar time of the ninetieth meridian west from Greenwich, commonly known as central time, as given in any almanac.

SECTION 1214. 995.50 (7) of the statutes is amended to read:

995.50 **(7)** No action for invasion of privacy may be maintained under this section if the claim is based on an act which is permissible under ~~ss.~~ s. 196.63 or ~~968.27 to 968.37~~ under subch. IV of ch. 968.

SECTION 1215. Initial applicability.

(1) This act first applies to prosecutions commenced on the effective date of this subsection.

(2) This act first applies to proceedings, commitments, and requirements related to offenses committed on the effective date of this subsection.

SECTION 1216. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of section 969.02 (3) (e) of the statutes takes effect on January 1, 2014, or on the day after publication, whichever is later.

(2) The treatment of sections 165.76 (1) (g) (by SECTION 85), (1m) (by SECTION 87), and (4) (a), (b), and (c), 165.765 (1m) and (2) (a) 1., 165.77 (2) (b) (by SECTION 93), (2m) (c) (by SECTION 95), and (3) (by SECTION 97), (4) (am) 1. and 2. (intro.), a., b. and d., and 970.02 (8), of the statutes takes effect on April 1, 2015, or on the day after publication, whichever is later.

(END)

and 971.027 (7) (title) ✓

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SECTION 1. 971.027 (6) (title) and (7) (title) of the statutes are created to read:

971.027 **(6)** (title) OBTAINING IDENTIFICATION DATA.

(7) (title) OBTAINING BIOLOGICAL SPECIMEN.

Suggested Reorganization of LRB Analysis

This bill reorganizes each chapter of the criminal procedure code, with the exception of chapter 973, Sentencing. This bill creates subchapters in long chapters, separates long statutes into shorter statutes, reorganizes individual statutes, and provides titles for some provisions. The bill also creates new authority and codifies current practice to promote fair and efficient resolution of cases.

Comment [as1]: This may fall under the forbidden category of "advocating for the bill."

Chapter 967 provides definitions of terms used throughout the code and collects general provisions that are scattered in other chapters under current law. For example, the definition of "jeopardy" and provisions for granting immunity are currently in Chapter 972. Provisions relating to the presence of the defendant, service on the defendant, and substitution of judge are currently in Chapter 971. Under the bill, definitions in current law are collected in one place and definitions are added for "complaint," "district attorney," "felony," "misdemeanor," "motion," and "sentencing."

Chapter 968 collects all provision relating to investigative procedures: inquests, John Doe proceedings, grand juries, "wiretapping," and search and seizure. Almost all provisions are from current law. The bill creates a process that requires a court, upon the request of a district attorney and a showing that the information requested is relevant to a criminal investigation, to order a financial institution to disclose to the district attorney whether the person named in the order has or had an account at the financial institution.

Chapter 969 addresses arrest and release. It begins with a new section identifying the ways in which the appearance of a defendant may be secured. It includes provisions intended to expedite the processing of misdemeanors. Under current law, a citation issued by a law enforcement officer directs a person to appear in court and answer criminal charges. The citation may not be used as a criminal complaint. This bill allows a citation for a misdemeanor that is issued by a law enforcement officer to be used as a criminal complaint if the district attorney endorses it. The bill specifies the contents of the citation, such as the crime the person allegedly committed, the date of the commission, and the maximum penalty for the crime. The bill requires a law enforcement officer citing a person for a misdemeanor to release the person without a cash bond unless certain circumstances apply, including if the person does not give proper identification or appears to endanger a person or property.

The bill also facilitates the release of persons after arrest. Under current law, a law enforcement officer generally may release a person who is arrested without a warrant without requiring the person to appear before a judge if the law enforcement officer is satisfied that there

are insufficient grounds for the issuance of a criminal complaint against the person. Under this bill, a law enforcement officer may release such a person without determining thatif there are insufficient grounds for the issuance of a criminal complaint.

Under current law, a person arrested for a criminal offense may be released under reasonable conditions that the court sets at an initial appearance. This bill provides that, with exceptions, a district attorney may release an arrested person before the initial appearance if the person signs a bond. The district attorney may not impose monetary conditions of release but may impose other conditions, including requiring the person to report any address change or to appear at specified times and places for investigative purposes or restricting the person from contacting a specified person or from possessing a dangerous weapon. The district attorney, when determining whether to release on bond, may consider all of the following: whetherthe the defendant has provided proper identification, if whether the defendant is willing to comply with the conditions of the bond, if whether the defendant appears to pose a danger to a person or property, if whether the defendant can show sufficient ties to the community, if whether the defendant has previously failed to appear in response to a citation, subpoena, summons, or order of court, and if whether further detention appears necessary for investigative activities.

If the court orders release, this bill requires the court to release the defendant to return on a specific date without conditions; on a personal recognizance bond; on an unsecured appearance bond; or on a secured appearance bond. This bill also allows a third party who has deposited cash for the release of a defendant on a secured appearance bond to apply to the court for an order to return the deposit before the entry of a judgment of conviction or forfeiture. The court then may determine whether to remit the deposit and whether to modify the conditions of release.

This bill requires a court, except in extraordinary circumstances, to release a person who is arrested without a warrant within 48 hours of the arrest unless the court has determined there is probable cause that the person committed an offense.

Chapter 970 collects statutes relating to the commencement of prosecutions. ~~It eliminates the preliminary examination.~~

Under current law, a defendant in a felony case is entitled to a preliminary examination, at which the court determines whether there is probable cause to believe that the defendant committed a felony. This bill eliminates the preliminary examination.

This bill also replaces several statutes governing deferred prosecution agreements in specific cases with a single, general statute defining and authorizing deferred and suspended prosecution agreements. The bill provides that the same standards that govern a district attorney's charging authority also govern the district attorney's authority to enter into a deferred prosecution agreement and that the same standards that apply to a court's authority to schedule cases and grant continuances apply to a court's authority to suspend prosecution under a suspended prosecution agreement. Under this bill, both a deferred prosecution agreement and a suspended prosecution agreement are enforceable in the same manner as a plea agreement. The

bill further notes that consenting to a deferred prosecution or suspended prosecution agreement is not an admission of guilt nor is it admissible in a trial relating to the charge to which the agreement pertains. This bill makes generally applicable a provision in current law that grants immunity from civil liability in excess of $25,000 for acts or omissions by an organization or individual for whom an agreement assigns an individual to work.

Comment [c2]: See s. 971.38(2)

Chapter 971 addresses pretrial procedures, with subchapters for commencement of proceedings, pleas, scheduling and expedition of proceedings, discovery, motions, and juveniles in adult court. As to pleas, this bill creates a single, general statute for plea agreements. The bill provides that the district attorney and the defendant, without the court's participation, may reach a plea agreement. The agreement may require the district attorney, if the defendant enters a plea of guilty or no contest, to take certain actions, including moving to dismiss or amend any charge; recommending the defendant's request for a particular disposition; or agreeing that a specific disposition is appropriate. The bill also creates a single statute to clarify, and explain the consequences of, the different pleas available to the defendant.

Under current law, before a criminal court dismisses a case against a person, the court must inquire if the district attorney has offered all of the victims an opportunity to confer with the district attorney concerning the prosecution and outcome of the case. This bill codifies case law by addings that, if the district attorney moves to dismiss a complaint, the trial court must grant the motion unless the court finds that dismissal is contrary to the public interest or, if the motion is made during the trial, unless the defendant has not consented. If the court grants the motion, the action is dismissed and the clerk must enter an order to that effect.

The bill requires the court to grant a motion, made before sentencing, to withdraw a plea of guilty or no contest if a fair and just reason for doing so is established and requires the court to grant such a motion, made after sentencing, if the defendant did not knowingly, voluntarily, and understandingly enter the plea or if withdrawal is required to prevent a manifest injustice. Finally, the bill specifies that a withdrawal of a plea of guilty or no contest vacates the judgment, reinstates any original charge, and restores the parties to the position they were in before the plea was accepted.

Under this bill, the purpose of discovery is defined as to promote fair and expeditious disposition of criminal charges, to provide the defendant with sufficient information to make an informed plea, to permit thorough preparation for and minimize surprise at trial, to reduce interruptions and complications during trial and avoid unnecessary trials by resolving any issues before trial, to minimize inequities among similarly situated defendants, to effect economies, and to minimize the burden upon victims and witnesses.

Current law requires a district attorney, upon demand and within a reasonable time before trial, to disclose to the defendant any reports or statements of experts made in connection with the case or, if an expert does not prepare a report or statement, a written summary of the expert's findings or the subject of his or her testimony, and the results of any examination, scientific test, experiment, or comparison that the district attorney intends to offer in evidence. This bill

requires any party who intends to call an expert witness to, not less than 15 days before trial, notify the party of the expert's name, address, and qualifications and furnish any reports or statements of experts made in connection with the case or, if none, a written summary of the expert's findings or the subject matter of his or her testimony, and the results of any mental examination, scientific test, experiment, or comparison that the party intends to offer in evidence.

Under this bill, before trial and upon motion by either party, the court may issue a subpoena to require the production of documents and other tangible objects if the evidence may be material to the determination of issues. The motion and the subpoena must specify who must produce the material, whether certified copies of documents may be submitted in lieu of appearance, and other conditions.

Under this bill, the disclosure of discoverable material may be accomplished in any manner mutually agreeable to the parties. If the parties do not agree, the party that has the duty to disclose must either provide a copy of the material to be disclosed or notify the other party that the material may be inspected, copied, or photographed during specified reasonable times and provide suitable machinery for making copies.

Under current law, courts use their authority to manage litigation to specify times for discovery, pretrial motions, notices of intent to offer an alibi or another defense, pretrial conferences, trials, and other proceedings. This bill codifies this specific authority to issue and amend scheduling orders.

Under this bill, the court may, upon motion by the district attorney, order a defendant to participate in a procedure to obtain nontestimonial evidence if the procedure is reasonable. Such procedures include appearing, moving, or speaking for identification in a lineup; trying on clothing and other articles; providing handwriting and voice exemplars; being photographed; having fingerprints or other body impressions taken; providing samples of blood, urine, saliva, semen, skin, breath, hair, or nails or materials under the nails; submitting to body measurements and other reasonable body surface examinations; and submitting to physical and medical inspection.

Under this bill, the court may, upon motion of a defendant, issue a subpoena requiring an individual to participate in a procedure to obtain nontestimonial evidence if an affidavit or testimony shows probable cause to believe that the individual to be subpoenaed committed the crime with which the defendant is charged and that the evidence sought is necessary to an adequate defense and cannot practicably be obtained from other sources.

Under this bill, the district attorney may provide discovery before the initial appearance. At the initial appearance this bill requires the district attorney to disclose, after the defendant has obtained or waived legal representation, any pertinent law enforcement investigative reports the district attorney has and a copy of the defendant's criminal record.

The section on motions includes a new section for motions asserting that a statute is

unconstitutional. Under current law, required procedures are in the civil procedure statutes. This bill provides that, if a defendant moves to dismiss a criminal prosecution by asserting that the statute under which he or she is charged is unconstitutional, the defendant must serve the motion on the attorney general and the district attorney.

This bill specifies that, if a defendant moves for severance because a codefendant's out-of-court statement refers to, but is not admissible against, the defendant and the court determines that the state intends to offer the statement in evidence, the court must require the district attorney to elect one of the following: 1) a joint trial at which the statement is not received in evidence; 2) a joint trial at which the statement is received in evidence only after all references to the defendant have been deleted, if admission of the statement with the deletions made will not cause prejudice; 3) a separate trial for the defendant; or 4) if the court approves, a single trial with a separate jury for the defendant and the codefendant.

The section also includes a new motion for dismissal of the complaint. The bill permits a defendant to move for a pretrial dismissal of the complaint. The motion must state the grounds and specify the following: 1) any elements or required facts that the defendant believes the state cannot prove because there is no genuine issue as to any material fact; 2) any evidence, or absence of evidence, that the defendant believes is uncontroverted and that establishes the grounds stated in the motion, and 3) any applicable included crime that the defendant believes the state cannot prove at trial because there is no genuine issue as to any material fact. If the grounds, if true, would justify granting the dismissal motion and the allegations in the complaint do not demonstrate that there is a genuine issue of material fact as to those grounds, the district attorney may file a written response to establish the elements or other facts that the state is required to prove at trial. The court may request that the district attorney and defense counsel present arguments and may allow testimony to resolve the questions whether a genuine issue of material fact exists. Unless the court denies the motion because the grounds, if true, would not justify granting the motion or because the allegations demonstrate a genuine issue of material fact, the court must rule on the motion based on the complaint, the material submitted by the defendant in support of the motion, and material, testimony, or argument presented. If the court concludes, for the reasons specified in the motion, that there is no genuine issue as to any material fact, the court must either grant the motion or allow the district attorney to amend the complaint.

Chapter 972 collects and reorganizes statutes relating to criminal trials. Under this bill, if the court authorizes the jurors to ask questions of witnesses, the court must instruct the jury to ask only questions that clarify information already presented and must instruct the jury of the procedure to be used. The procedure provides that the juror must submit the question in writing to the judge who will show the question to the parties. The parties may object to the question without the jury knowing. If the judge, upon reviewing the question and any objections, determines that the question is legally proper, the judge may ask it of the witness.

Under current law, if the number of jurors, including any additional jurors selected, remains more than required at final submission of the cause, the court must determine by lot

which jurors will not participate in deliberations and discharge them. Under this bill, the court may, for good cause, discharge additional jurors other than by lot. Moreover, this bill allows the court to determine which jurors will not participate in deliberations but retain those jurors as alternates after the jury retires to deliberate. If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew.

This bill defines "stipulation" as an agreement between the parties that a specified fact is taken as established without need for proof. Further, a stipulation must be set forth on the record when the court accepts it, and, in a jury trial, the court must instruct the jury to take stipulated facts as conclusively proved.

This bill specifies that a verdict must be unanimous and returned in open court. Under current case law, a defendant in a criminal case has the right to poll the jury, and refusal to permit the defendant to do so is an error for which the verdict will be set aside. This bill requires a court to ask each juror individually whether the verdict as returned was and is ~~in~~ the juror's verdict. This bill requires the court to accept the verdict if it is in proper form and confirmed by the poll.

Chapter 975 addresses mental health issues affecting a criminal prosecution: competency to stand trial and mental responsibility [the "insanity defense"]. Under current law, when there is reason to doubt a defendant's competency to proceed in a criminal action, the court must appoint an examiner to submit to the court a report upon the condition of the defendant that contains specified findings. This bill adds that, if the examiner reports that the defendant is not competent to proceed and that the defendant is not likely to become competent within the maximum period of commitment under the competency statutes, the examiner must provide his or her opinion on whether the defendant meets the criteria for civil commitment.

The bill reorganizes the competency hearing statutes and makes certain changes to burdens of persuasion. Under current law, at the outset of the competency hearing, if the defendant claims to be incompetent or is silent, the defendant must be found incompetent unless the state proves by the greater weight of the credible evidence that the defendant is competent. Under current law, if the defendant claims to be competent, the defendant must be found competent unless the state proves by clear and convincing evidence that the defendant is incompetent. Under the bill, the state has the burden of going forward with evidence at a competency hearing, and the court may find the defendant competent to proceed only if the court finds by the greater weight of the evidence that the defendant is competent to proceed. The bill specifies the following: 1) if the defendant is not competent and the court finds by the greater weight of the evidence that the defendant is not likely to become competent within the maximum period of commitment, the court must order the defendant be released or delivered to a facility; 2) if the defendant is not competent and the court finds by the greater weight of the evidence that the defendant is likely to become competent within the maximum period of commitment without inpatient treatment, the court must order that the defendant be released and may require the defendant to participate in outpatient treatment, or undergo periodic reexaminations to determine whether the defendant has become competent to proceed, for a period that does not exceed the maximum period of commitment; or 3) if the defendant is not competent and the court finds by

clear and convincing evidence that the defendant is likely to become competent within the maximum period of commitment if provided appropriate inpatient treatment, the court must commit the defendant to the custody of the Department of Health Services (DHS) for treatment. Finally, if the defendant is committed to the department and the court finds by clear and convincing evidence that the defendant is not competent to refuse medication or treatment, the court must find that the defendant is not competent to refuse medication or treatment and must order whoever administers medication or treatment to the defendant to observe appropriate medical standards.

Under current law, if the defendant is committed to the custody of DHS for treatment following a competency proceeding, the days spent in commitment are given credit toward the service of his or her sentence for the same course of conduct. This bill requires the court to include in the commitment order a specific finding of the number of days spent in pre-commitment custody.

Current law requires DHS to periodically reexamine the defendant and to submit to the court a written report on the defendant's mental condition at three months, six months, and nine months after commitment. This bill requires an additional report if DHS determines that the defendant has become competent or that the defendant is not likely to become competent within the remaining commitment period and requires the court to schedule a review of this additional report within 14 days.

This bill creates a process for the court to follow whenever the court determines there is reason to doubt a defendant's ability, with a reasonable degree of rational understanding, to assist counsel or make decisions when seeking an appeal or a motion for postconviction relief. Pending the determination or after a finding of incompetency, the circuit court may allow proceedings on any issue raised by the defendant's attorney that rests on the record, does not require the defendant to assist counsel or make a decision, and involves no risk to the defendant; and the court of appeals may grant the defendant a continuance or lengthen the time for filing necessary notices or motions for postconviction relief. If the court finds that the defendant lacks competency, the court may appoint a guardian to make decisions or order treatment to restore the defendant to competency to pursue postconviction relief. Finally, the bill provides that a defendant who lacks competency to pursue postconviction relief may, after regaining competency, raise any issue at a later proceeding that he or she did not raise earlier because of incompetency.

Under current law, if a defendant is found not guilty by reason of mental disease or defect, the court must enter a judgment of not guilty by reason of mental disease or defect and proceed to commitment. The judgment is interlocutory to the commitment order and reviewable upon appeal. Under this bill, the court must proceed to a dispositional hearing and the commitment order is the final order and is appealable as a matter of right. Upon appeal, this bill provides that all properly preserved issues, including those relating to the guilt phase of the trial, may be raised.

Hanaman, Cathlene

From: April Southwick <April.Southwick@wicourts.gov>
Sent: Wednesday, September 11, 2013 10:51 AM
To: Hanaman, Cathlene
Subject: Final suggested edits to the criminal procedure bill
Attachments: LRB analysis reorg by workgroup 9.11.13.doc

Good morning, Cathlene. Attached is the criminal procedure workgroup's suggested reorganization of the analysis. It contains all of your original text, members just reorganized it chronologically by chapter with a few introductory/transition sentences added. Thanks for giving us the chance to offer comments and use it as you find appropriate or helpful.

Also, we found three more sections of the bill that require minor edits.

1) Sec. 971.75 (4) should be amended to read: "The court shall conduct any hearing on retention of jurisdiction that is required under sub. (3) (b) within 20 days of the probable cause finding under sub. (3) (b). On stipulation of the parties, or upon motion and for cause, the court may extend that time." Adding the last sentence maintains internal consistency with sub. (2). This sentence was unintentionally omitted when these provisions were broken out into two separate subsections.

2) Delete s. 974.02 (3). The consensus is that this subsection is not necessary and it causes more confusion than it clarifies.

3) There's a question regarding internal consistency between s. 974.06 (5) and 974.08. Please resolve it by amending s. 974.06 (5) to read, "Subject to s. 974.08, a court may entertain and determine such a motion under sub. (1) without requiring the production of the prisoner at the hearing. The court may hear the motion may be heard by telephone or live audiovisual means under s. 807.13."

With these changes, it's ready to be run as an introducible /1! Rep.
Ott's office would like it by Friday. Just let me know if you have any questions or concerns.

Thank you!!!

April

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